

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| Public Interest Obligations |) | |
| of TV Broadcast Licensees |) | MM Docket No. 99-360 |
| |) | |

Comments of the United States Catholic Conference

The United States Catholic Conference ("USCC") submits the following comments in the above-referenced Notice of Inquiry, released December 20, 1999.

The USCC is a nonprofit corporation organized under the laws of the District of Columbia. All active Catholic Bishops in the United States are members of the USCC. USCC advocates and promotes the pastoral teachings of the Bishops in such diverse areas as education, health care, social welfare, immigration, civil rights, family life and communications. USCC has extensive experience producing, funding and placing quality programming for television, radio, and cable outlets. USCC is committed to maintaining a place for religion and values on the public airwaves and to programming that inspires, informs, and educates. Protection of the public's rights to disseminate and receive information from diverse sources on the scarce public resource of the airwaves is at issue in this rulemaking and is a matter of particular concern to the USCC.

In this Notice, the FCC seeks comments on whether to impose minimum public interest obligations on digital broadcasters. USCC urges the FCC to impose clear, enforceable requirements that digital broadcasters (1) ascertain the needs and interests of their communities of license and (2) set a minimum amount of free public affairs and other free programming which meets those needs and interests. This minimum quantity of free programming must be aired on each channel on which the digital broadcaster provides services.

USCC and Catholic dioceses which attempt to air USCC-produced and their own programs on local television outlets face formidable barriers to placing those programs. Those barriers have resulted from the elimination of regulations which enforced the public interest responsibilities of broadcasters, cable operators and satellite licensees, and the increased concentration of these regulated industries. There are fewer opportunities for placement of programs, and those that air are scheduled at air times when few persons are watching. Our experiences in attempting to distribute programs with religious and social welfare themes on television should inform the decisions of the FCC as it creates the regulatory environment for digital television.

The Legal Obligation to Protect the Public Interest

The gift to television broadcasters of an additional channel for digital television use is a

powerful reminder that the broadcast spectrum is a scarce public resource in which the public has a First Amendment interest. Whether television broadcasters use analog or digital technology, they must use a portion of the television spectrum to operate and obtain a license from the FCC for the use of that spectrum. The FCC's decisions regarding digital television, then, must be guided by the same bedrock principles. A television licensee operates on a public resource not open to all, and the First Amendment speech rights of the public in the use of that spectrum, not the broadcaster, are paramount. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969). The government may require the licensee to "conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves." Id. at 389. The obligation of television broadcasters to act as a public trustee is essential to protecting the public's First Amendment rights. "[I]t is axiomatic that broadcasting may be regulated in light of the rights of the viewing and listening audience Safeguarding the public's right to receive a diversity of views and information over the airwaves is therefore an integral component of the FCC's mission." Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 567 (1990). A broadcaster's obligation to serve the public interest by acting as a public trustee promotes the First Amendment rights of the public. "[T]he 'public interest' standard necessarily invites reference to First Amendment principles" Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 122 (1973), and, in particular, to the First Amendment goal of achieving 'the widest possible dissemination of information from diverse and antagonistic sources,' Associated Press v. United States, 326 U.S. 1, 20 (1945)." FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 795 (1978).

Scarcity of spectrum has not been eliminated. The FCC's creation of a new low power radio service acknowledged the risk that higher power radio stations might be threatened with unacceptable interference if certain low power classes of service were authorized. Creation of Low Power Radio Service, MM Dkt. No. 99-25, 65 Fed.Reg. 7615 (2000). Just this month, the FCC issued regulations to minimize interference to public safety spectrum users from new commercial users. WT Dkt. No. 99-168, FCC News Release, March 9, 2000. The engineering efforts necessary to create new channel allocations for digital television itself testify to the continued scarcity of broadcast spectrum. Advanced Television Systems, Order on Reconsideration of Sixth Report and Order, 11 CR 634 (1998); Advanced Television Systems, Sixth Report and Order, 7 CR 994 (1997).

The FCC has consistently defined the public interest over the last sixty years as requiring each broadcast licensee to determine the needs and interest of its community of license, including religious needs, and develop programming to meet them. That simple principle, applied here, is the touchstone of effective regulation of digital television. The FCC has ample authority to apply the obligation to serve the public interest to each digital channel operated by digital broadcasters. In section 336 of the 1996 Telecommunication Act, Congress specifically retained broadcasters' "obligation to service the public, interest, and necessity." 47 U.S.C. 336. Just because there is a new technology available to television licensees does not divest the FCC of its authority to interpret how the public interest is to be served. "While this criterion [the public interest] is as concrete as the complicated factors for judgement in such a field of delegated authority permits, it serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its

legislative policy Underlying the whole law [the Communications Act] is recognition of the rapidly fluctuating factors characteristic of the evolution of broadcasting and of the corresponding requirement that administrative process sufficient flexibility to adjust itself to these factors.” FCC v. Pottsville Broadcasting Co. 307 U.S. 134, 137-138 (1940). The FCC has continued to adjust the public interest obligation as television has evolved.

In its 1941 Supplemental Report on Chain Broadcasting, the FCC confirmed that it intended that broadcasters devote an adequate amount of time to meet the needs of the community in issues of local interest. NBC v. United States, 319 U.S. 190 (1943). The FCC clarified a broadcast licensee's public interest obligation by issuing programming guidelines, which listed religious programs as one of the "major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located." 1960 Programming Statement, 20 R.R. 1901, 1913 (1960). In 1971, the FCC further assisted licensees in meeting their fundamental obligation to serve local needs and interests by developing methodologies to determine those needs and interests, one of which was to interview community leaders. Primer on Ascertainment of Community Problems, 21 R.R.2d 1507 (1971). Among these community leaders, the FCC specifically mentions religious leaders, although the licensee is expected to determine which community groups and needs are significant and merit responsive programming. *Id.* at 1518. Even as the FCC changed the regulations intended to ensure that licensees meet their public interest obligation to their local community of license, it confirmed that a pivotal goal of the Communications Act is "...the presentation of programming to meet community needs and interests." Revision of Application for Renewal of License, 49 R.R.2d 740,748 (1981).

While the FCC's deregulatory actions of the early 1980's were not intended to alter broadcasters' obligations to meet community needs with responsive programming, but only changed the manner that obligation was enforced, the result has been that broadcasters have failed to meet their public interest obligations. The experience of the USCC and Catholic dioceses provides confirmation of that failure. What's Local About Local Broadcasting?, the joint 1998 report of the Media Access Project and the Benton Foundation, provides ample evidence that television broadcasters provide little or no programming addressing local issues. That report, provided to the President's Committee on the Public Interest Obligations of Digital Television Licensees, found that in five United States television markets representing top 10, 25, 50 100 and 100+ markets, commercial television licensees provided just 0.35% of total programming hours to local public affairs. That failure to serve the public interest, coupled with the opportunity for change created by digital television, necessitates the need for new regulations to ensure that digital television serves the public interest.

Denial of Access for Religious Programming

The experience of local religious communicators over the past 20 years demonstrates that broadcasters' actions are completely at odds with the legal requirements that they serve the public interest by airing programs which meet community needs and interests described above. The following are some of the experiences of communications directors of Catholic dioceses which

indicate the need for regulations. At the request of the communications personnel, their names and the names of their religious employers, and the call signs and community of license of the television licensees have been withheld. Most of the communications directors feared that if they were identified, television licensees would retaliate by refusing to respond to requests that licensees meet community religious needs. Such fears themselves reveal the need for regulations to require that digital television licensees serve the public interest.

- The big change for us occurred approximately one and one-half years ago when the ABC station informed us they would no longer broadcast our Sunday Mass, after 27 years on the air. After much discussion, the general manager could/would not even sell us air time for the Mass. It was the same story at the other stations as well; no local times available. Everything was sold and not available locally. We now pay \$72,000 annually to broadcast a half hour Mass on PaxTV. [W]e were told by management we could not broadcast any subject that would be considered controversial; i.e., abortion. The role of the Catholic Church is a vibrant one here, especially with Catholic Charities, the elderly population and the immigration issues that occur on almost a daily basis. The Church now pays for TV time for :30 announcements; in fact, we have just begun our second flight for the Lenten and Easter seasons. The first flight of advertising on broadcast stations aired during Advent and we paid nearly \$300,000 for 800 spots. - **Director of Communications, Florida**

- The four commercial TV stations in this market do not accept PSAs – period. All of them are happy to serve us when we approach them as a paying customer. A few years ago, I even had one studio hand mention how much he enjoyed the old Franciscan spots of years ago – and then lament that the Franciscans probably quit producing them because stations don't run PSA's since the FCC public service requirements have been rolled back. One station in our market produces and carries our TV Mass on Sunday since it went on the air in the 1950s. But after carrying it at 8 a.m. for about two decades, the station pushed it up to 6 a.m. several years ago with the explanation that it had sold all the slots before that time period. We had a great deal of complaints, but could not get the station to relent. So to get a better time, we bought the 6:30-7 a.m. slot when it opened up. Station executives and sales and service personnel with whom we are acquainted will often privately lament the passing of the FCC rules, but all of them concede that times have changed and the bottom line is the only measure of performance that matters to station owners and managers. - **Director of Communications, Illinois**

- [W]e, in desperation, dedicated about \$6,000 toward getting our PSA's (the 3 thirty second spots provided by the USCC) aired on the local TV stations. All the sales people I dealt with say these are different times. When I was in TV in the 70's and 80's, we did public service programming, not just PSA's! We literally gave worthwhile causes and issues programming time. I think it's a crime that things have deteriorated to this point. - **Director of Communications, Pennsylvania**

- No free air time whatsoever in this market... Typical response is... "If we do it for one church we

have to do it for all of them.” If you want something aired you have to purchase air time. We bought air time last year for some really good Respect Life spots and one station refused to give us a “buy one, get one free arrangement” because they said the spot was “political.” If I walked into any local TV station or radio station and asked for their public file I would be blackballed in this market by every licensee. I would be committing public relations *hari kari* if I walked in and asked for a public file. - **Director of Communications, Texas**

- There are no religious PSA’s or programs on television and cable in my market that benefit the local community. I have yet to see a PSA in fringe, prime time, or daytime. If they have time they use it to promo their own shows. Any spots or programs are paid for by the majority of local dioceses. We had a once a year Mass at midnight on Christmas Eve donated by the station but that was canceled in 1999. Reason: too expensive for them to carry. Radio and TV stations are owned by huge conglomerates who have only one focus – money. We knew this would happen with deregulation of ownership. These huge conglomerates have no interest in the local communities in which they own stations. It’s only the bottom line. They think that having a newscast a couple times a day covers their community responsibilities. - **Director of Communications, Arizona**

- Free PSA’s on commercial TV network affiliates are harder and harder to come by....All three TV network affiliates admit that they choose only ‘warm and fuzzy’ safe PSA’s which speak to the largest portions of the audience; forget advocacy (pro-life) or denominational (evangelization) altogether. It is expensive to successfully buy air time. Once you start purchasing, you burn your bridges behind. Free PSA time will even harder to secure [once you begin buying air time]. The diocese is in no financial position to seriously consider paid TV advertising. - **Director of Communications, Vermont.**

- After more than 30 years, the tri-faith “Point of View” program was dropped The station claimed that it would increase children’s programming ... in place of “Point of View.” [The program featured] interesting people sharing stories about the role religious faith has played in their lives. - **Director of Communications, New York.**

- The only regular program (non-paid), a weekly worship service that rotated among different churches, was taken off the air in ‘95 so the time could be sold. Nothing non-paid has replaced it on any of the stations. I once attempted to buy time on a local channel to broadcast our bishop’s installation. I was told I could not even but the time because it would disrupt the audience for the soap operas. Literally I could not get them to name a price. In short, there is no unpaid time available on the TV stations in my community other than the very occasional PSA time. - **Director of Communications, Iowa**

- The Sunday Mass for Shut-ins is one of the longest running broadcasts of the Mass in television history, first airing in 1953. Local celebrants, choirs and congregation members from Washington, Maryland and Virginia participate in the production. Throughout the 1960's, 1970's and early 1980's viewers enjoyed the professional production support of a local television station and a mid-Sunday morning timeslot. After the FCC’s community service requirements were relaxed in the mid-1980's,

the program experienced a gradual reduction in exceptional broadcast scheduling. Air time moved from 9 or 9:30 a.m to 6:30-7 a.m. Production support slowly was cut. Finally, both stations [which had supported the program] ended production and air time. The justification given by both stations for ending their long-term community service was the fact that the FCC no longer required that commitment. After ending its support, [one station] initially offered to sell the Archdiocese a 7 a.m. Sunday morning time slot for \$1,500 per half-hour [\$78,000 annually]. This meant the Archdiocese would have to pay \$78,000 annually simply to stay on the air, when, for decades, the air time had been made available for no cost as a community broadcast service. We have had the experience we have had mirrored in other archdioceses. - **Director of Communications, Washington, D.C. area**

- [T]he [television] station moved our time [for a weekly televised religious service] from 11:30 a.m. to 6:00 a.m. Almost weekly, I still get calls or letters of complaint from shut-ins or their families. The station manager is apologetic, but says he needs that later spot to meet federal law requirements for three hours of children's programming. He told me . . . that we wouldn't even be able to buy that later time. -**Another Director of Communications, Florida**

- One of the largest of the FM stations refused to sell us air time [for 60 second advertisements supporting a program which assists women who have had an abortion]. They claimed that because the word abortion was used in the spot that it would be offensive . . . We produced a very well done television commercial for the program that was rejected by all the television stations [in the Boston market] because they claimed that they would have to offer equal time to other groups. -**Pro-Life Director, Massachusetts**

- Local television stations have deleted the Mass that was broadcast weekly to shut-ins, the sick and the elderly under the pretext that it is too religious and that they would be required to give equal time to other denominations even though 50% of the audience is of one denomination. One station said that it was deleting the Mass to fulfill its obligation to programs for children. That [children's] programming was commercially sponsored, revenue generating, and far from educational. A public affairs program that had been aired for many years was pulled in order to accept paid programming. - **Director of Communications, New Jersey**

- The most common cause for refusal [to air our programs] is 'too religious' in context or controversial in content. Whether paying or free, our PSA's are routinely scrutinized and dropped or we are asked to rephrase. Better still, [stations offer] the sly inference that it's a free PSA if it is watered down. It's advertising [that] you would have to pay for, if not [watered down]. This applies to anything that touches on [the program we produced] or alternatives to abortion.- **Another Director of Communications, New Jersey**

- [A network] affiliate in [a major market] pulled a program called 'For Heaven's Sake' from the air, citing the Children's Television Act as the reason. The program had been on the air for more than 20 years and featured a Catholic priest, Jewish Rabbi and a Protestant minister discussing various topics. The program aired at 6:30 a.m. on Sunday morning and should not have affected the time allotted for the Children's Programming Act. ... In 1986 [another network] provided the Easter Mass

live from the [Catholic] Cathedral for viewers at no charge. They did a Christmas service with the Baptists and other [religious] celebrations for the Jewish community. That ended in 1988 due to lack of budget to continue community service programming.

- Another Director of Communications, Florida.

- I have repeatedly tried to get interfaith religious documentaries and public service announcements aired by three local network affiliates. In all cases, these have been rejected. The reasoning most often is the 'equal time' concern. There had also been a concern of content and I have had numerous conversations with no positive result about consideration of the documentaries that are prepared by interfaith teams. Recently, I have frankly stopped trying because of these futile attempts. On the other hand, we have never been rejected when we have agreed to buy air time for [our] Christmas message or have tagged our [religious service] (which is purchased air time) with [our] public service announcements. **- Another Director of Communications, Florida**

- The usual comments from programming directors is that due to Pacific Time, sporting events are scheduled at the times the [religious] specials might be aired elsewhere. I also hear that the stations air their own news programs on Sunday mornings. We do have one [network affiliate] station that has a special [religious] segment on their weekend news programs. A priest...gives a three minute commentary on a general topic. The station has told him that they are the only station in the U.S. that has air time for a priest in a non-religious program. In [a smaller] market, when an [interfaith] special is aired, it usually airs at 5:30 or 6:00 a.m. **- Director of Communications, Oregon**

- We usually have very little luck in placing any of the programs produced by the Interfaith Broadcasting Commission for television or radio. Most of our stations say there just isn't any time available. However if I tell them we are willing to pay for a time slot, then all of a sudden they cannot air one of their paid programs for that week and we can run the show. **- Director of Communications, Indiana**

- A decade ago our PSA's were welcome at the television stations. Some even requested more of 'those [religiously-based] spots.' Today, none of the four network affiliates in our . . . city accepts any PSAs. The reason: if you want time, you have to pay for it. The one exception: one station has given us a half-hour for [a religious service] and studio time to produce it since it went on the air in the early 1950s. From the beginning, the Mass aired at 8:00 a.m. But about a decade ago it was moved to 6:00 a.m. because the station's new management found paid programming to fill all the discretionary time slots it had on Sunday mornings beginning at 6:30 a.m. When the 6:30 a.m. time slot became open, we bought it, moved the Mass to 6:30 a.m. and put our programming on at 6:00 a.m. Initially we were able to run PSA's through the time between the Mass and the paid programming -- but now the station airs only paid ads at that time. The station manager's explanation is that the purpose of the station is to make money, and giving us any time at all really doesn't make any sense in that context. He has assured us that he won't withdraw the free time because he fears a backlash, but he will move it earlier yet if he can sell the time slot we now get. **- Another Director of Communications, Illinois**

- Almost all television stations in the metro area refuse to give us free public service time either in the way of spot announcements or programs. Only a few stations do. We have to pay for any programs such as weekly Mass; TV special programs; radio spots. Reasons given for not running free spots or free programs: if we do it for you we have to do it for everyone; we don't have the time to give or sell to you - we're sold out; we don't sell to religious organizations; it's not consistent with our programming. - **Another Director of Communications, Arizona**

- Spanish TV station rejected locally-produced Spanish Mass in favor of airing 'info-mercials.' Local CBS TV affiliate does not air any of the superb Interfaith Broadcasting Commission TV specials. A Spanish-speaking Catholic priest must buy time on local radio outlet to air his outreach program, which is public service oriented. All local affiliates have refused at some point to air religious programs and PSA's in so-called prime Sunday time unless they are paid. - **Another Director of Communications, Texas**

- At present, only one network owned-and-operated television station devotes a weekly program of 30 minutes to religious affairs. Responsibility for production of [that] program rotates through Catholic, Protestant and Jewish faiths. A similar program, with a definite public affairs bent, was canceled on short notice by another network owned-and-operated station two years ago and was not replaced. The third major network owned-and-operated station canceled a one-hour ecumenical program three years ago and did not replace it. A major independent station canceled three programs . . . one each for Catholic, Protestant and Jewish faiths. - **Another Director of Communications, Illinois**

- Faith Focus has also been sponsored by 17 area faith organizations ranging from the Jewish Federation of Dallas to the Baha'i Communities of Arlington, Dallas and Ft. Worth. It is the only non-profit seeking, non-denominational program on the air in our region. As one of the sponsors put it, 'Faith Focus has provided the only table that we all feel comfortable coming together at.' Without FCC regulations to level the playing field -- i.e. make everybody do at least some public-interest broadcasting -- eventually the pressures of the market made the station, with all its good intentions and demonstrated commitment, give up on Faith Focus. The program's cancellation is a classic example of when the public interest has been sacrificed to the profit imperative. You can't really blame our local station -- without FCC regulations -- they have nobody to answer to except their investors. - **Faith Focus Producer, Greater Dallas Community of Churches**

- Over the last seven years, IBC member programs have been pushed to earlier and less accessible air times as the networks have increased their weekend news and sports programming. Overall clearances of the programs, particularly on one network, have dropped significantly. - **Interfaith Broadcasting Commission**

These experiences illustrate why the FCC must take strong and definitive action to quantify and enforce a public interest standard. The FCC need not obtain scientific proof that lack of regulation results in lack of service in the public interest to justify regulations. "As long as the regulations are not an unreasonable means for seeking to achieve those [public interest] goals,

they fall within the FCC's general rulemaking authority recognized in the United States v. Storer Broadcasting, [351 U.S. 192 (1956)] and National Broadcasting Co. v. United States, [319 U.S. 190. (1943)] cases" FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 796 (1978). In that case, the Supreme Court upheld FCC ownership regulations, and the FCC's decision to reject the argument that evidence of specific abuses by common owners is necessary to support those regulations. "To the extent that the FCC relies on factual determinations of a judgmental or predictive nature, complete factual support on the record for the Commission's judgement or prediction is not possible or required; 'a forecast of the direction in which future public interest lies necessarily involves deductions based on the expert knowledge of the agency.' FCC v. Transmittal Gas Pipe Line, 365 U.S. 1, 29 (1961)". FCC v. WNCN Listeners Guild, 450 U.S. 582, 594-595 (1981).

Conclusion

Our diocesan and other institutions serving the public around the country all report unresponsive conduct on the part of television broadcasters. Each time, the conduct is traced to the same source. Absent specific regulations, broadcasters will continue to fail to serve the public interest using digital technology as they have while they used analog technology. The FCC has both the authority and the obligation to require a minimum amount of public interest programming on each digital channel used by digital broadcasters.

Respectfully submitted,

Mark E. Chopko
General Counsel

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Katherine G. Grincewich
Assistant General Counsel